

MARGARET E. PETERSON

IBLA 81-70

Decided June 4, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 27833 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Notice: Generally -- Regulations: Generally -- Statutes  
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Estoppel -- Federal Land Policy and Management Act of 1976:  
Recordation of Mining Claims and Abandonment -- Fees -- Mining  
Claims: Abandonment -- Mining Claims: Recordation

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

APPEARANCES: Barry N. Mesher, Esq., Tacoma, Washington, for appellant.

#### OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Margaret E. Peterson appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 18, 1980, declaring the Margaret mining claim, OR MC 27833, located June 23, 1956, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claim on or before October 22, 1979, as provided by statute and regulation. 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a).

Appellant complains that BLM did not inform her of the requirement regarding the filing of an affidavit of assessment work or notice of intention to hold the claim. In her statement of reasons for appeal, appellant states that prior to October 20, 1976, she received "Notice -- Mining Claim Owners" in the mail which is believed to have been sent by the county assessor, Skamania County, Washington. A copy of this notice shows that it lists certain documents which must be filed with BLM in order to record the notice of location under the Federal Land Policy and Management Act of 1976 (FLPMA), section 314, 43 U.S.C. § 1744 (1976). This notice does not mention an affidavit of assessment work or notice of intention to hold a mining claim, but does alert the reader that "complete instructions" may be obtained by contacting BLM. Appellant states that she filed the documents listed in the notice with BLM. She asserts that the notice estops BLM from finding the claim abandoned and void. Appellant also points out that BLM cashed the filing fee check. Appellant requests an evidentiary hearing in this case before an Administrative Law Judge.

[1] Under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the

performance of annual assessment work on the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980). The conclusive presumption of abandonment is imposed by the statute itself as a matter of law, and the statute does not invest the Secretary of the Interior with authority to waive noncompliance or to afford claimants relief from the statutory consequences. Lynn Keith, *supra*.

[2] Appellant's argument that the doctrine of estoppel should be applied is without merit. The responsibility for complying with the recordation requirements rested with appellant. The fact that appellant may have been unaware of the requirement of filing evidence of assessment work, while unfortunate, does not excuse her from compliance. All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations. John Plutt, Jr., 53 IBLA 313 (1981); Paula Troester Saragoza, 53 IBLA 247 (1981); *see Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947). Reliance upon incomplete information cannot relieve the owner of a mining claim of an obligation imposed by statute. Lynn Keith, *supra*.

[3] The fact that BLM negotiated appellant's check for the filing fee which accompanied the certificate of location does not mean that it waived its right to declare the claim abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the mining claim. Appellant's notice of location was filed for recordation with BLM in a timely manner. There can be no recordation of the certificate or notice of location of a mining claim without payment of the service fee. 43 CFR 3833.1-2(d); Susan Mativo, 52 IBLA 134, 135 (1981). There was no reason for BLM to know that the required evidence of assessment work or notice of intention to hold regarding the subject claim would not also be filed. Acceptance by BLM for filing of the notice of location of a mining claim does not constitute a recognition of the validity of the claim upon which an estoppel to declare the claim abandoned and void for failure to file evidence of assessment work can be based. *See William C. Reiman*, 54 IBLA 103, 106 (1981).

The granting of an evidentiary hearing is discretionary with the Board. 43 CFR 4.415. Due process of law requires no evidentiary hearing where there is no dispute as to any material issue of fact and the validity of a claim depends solely on the legal effect of the undisputed facts of record. John J. Schnabel, 50 IBLA 201, 204 (1980); Dorothy Smith, 44 IBLA 25 (1979). Since no issue of material fact has been presented in this case, appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr  
Acting Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

